May 30, 1996

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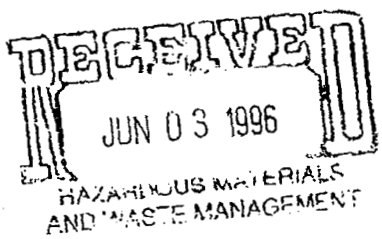

Chris Gilbreath
CDPHE, HM&WM Division
4300 Cherry Creek Drive South
Denver, CO 80202

Dear Mr. Gilbreath:

Thank you for the opportunity to comment on the Proposed Plan for Operable Unit 1, located at the Rocky Flats Environmental Technology Site. While I applaud DOE for accelerating the development of this proposed plan, funding to complete the preferred alternative identified in this proposed plan is not available either through the current baseline, included in RFCA, nor in the current FY 1997 budget. Additionally, it is unlikely that funding will be available in the near term, given that remediation of Operable Unit 1 is ranked number 12 in the current environmental restoration (ER) ranking for RFETS. Funding issues must be addressed to ensure that remedial action is conducted within the time specifications of CERCLA Section 120(e)(2) (i.e., within 15 months of completing the RI/FS).

In addition to the above concern, the preferred alternative includes excavation of soil from IHSS 119.1, potential treatment, and disposal of the excavated soil. The preferred alternative indicates that treatment may or may not occur and that the soil may be disposed either on-site or off-site. It seems highly questionable that an adequate detailed and comparative analysis could have been conducted given the ambiguity of the preferred alternative. Clearly, the ranking of this alternative, using the nine evaluation criteria of 40 CFR 300.430(e)(9)(iii)(A) through (I), would change depending upon whether treatment will be utilized to remove the organic contamination and whether disposal will occur on-site or off-site. Therefore, I suggest that DOE evaluate the preferred alternative as two separate alternatives which consider disposal with treatment and disposal without treatment.

Attached are specific comments on the proposed plan for OU 1.

Sincerely.

Mike Rowse

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Comments on the Proposed Plan and Draft Permit Modification of the Rocky Flats Environmental Technology Site Resource Conservation and Recovery Act Permit Operable Unit 1: 881 Hillside Area

- General Comment. CERCLA Section 104(6)(A) requires the Agency for Toxic Substances and Disease Registry (ATSDR) to perform a health assessment not later than one year after the date of proposal for inclusion of a given site on the NPL for those sites added after the date of enactment of Superfund Amendments and Reauthorization Act (SARA) of 1986. Have these health assessments been performed for the OUs at RFETS? If not, is it prudent to propose remedial activities without such assessment and will additional funds need to be allocated in the future to perform such assessment? Clearly, it would make no sense to conduct the health assessment after completion of the remedial action. Therefore, if the health assessment has not been performed, I recommend that DOE conduct the assessment and factor the results into the remedial action alternatives.

- Page 1, Second Column. This section states that this document is consistent with the IAG as well as the draft Rocky Flats Cleanup agreement (RFCA). This statement is not correct. RFCA has been crafted such that the EPA is the Lead Regulatory Authority (LRA) for activities conducted in the Buffer Zone and CDPHE is the LRA for activities conducted in the Industrial Area. This proposed plan indicates that both EPA and CDPHE share responsibility for this OU as the LRA, which is consistent with the Interagency Agreement but not RFCA. Because this plan is inconsistent with RFCA, as RFCA is currently written, the referenced sentence should be deleted. Further, to state that this document is consistent with the draft Vision does not say anything, given that the draft Vision is only a conceptual, non-enforceable, document.

- Page 2, First Column, First Paragraph, Last Sentence. This sentence states that the IHSSs were historically used to store and/or dispose of hazardous and non-hazardous materials, or are areas where releases of hazardous material occurred or are thought to have occurred. First of all, hazardous materials are regulated by DOT regulations and not necessarily by CERCLA. CERCLA regulates the release or threats of a release of a hazardous substance, pollutant or contaminant into the environment (see CERCLA Section 104(a)(1)). Secondly, by this point in the CERCLA RI/FS process, those areas where releases were thought to have occurred but subsequently were confirmed to be fictitious sites, should have been discounted via the remedial investigation. Therefore,

reference to vague language indicating releases were "thought to have occurred" should be deleted, unless DOE still does not understand the extent of contamination at this OU, in which case the entire proposed plan is called into question.

- Page 2, First Column, Second Paragraph. This paragraph states that this document also serves as a modification to the RFETS RCRA Part B Permit. Although I recognize that modification of the RCRA permit is driven by the IAG, I would like to go on record as stating that it makes no sense to modify the RCRA permit to state that actions completed pursuant to CERCLA authority are being addressed. These actions are not subject to the RCRA permit, except that RCRA section 3004(u) mandates that corrective action and schedules of compliance are required to be included for facilities seeking a permit. Additionally, on-site remedial activities conducted at RFETS would normally be subject to the CERCLA on-site permitting exemption had it not been for the regulators insistence on dual regulation (see 40 CFR 300.400(e)). The public is tired of witnessing duplicative regulation at RFETS, which results in the wasting of limited budget and tax payer dollars.

- Page 2, First Column, Second Paragraph, Last Sentence. This sentence states that CDPHE issues the Final Hazardous Waste Permit Modification once the remedial decision process is completed. It is interesting that CDPHE requires duplication of regulatory authority at RFETS and then they fail to follow through with there obligations, as specified in the IAG for issuing the permit modification. CDPHE has yet to issue a RCRA permit modification to incorporate any IM/IRA decision document or other CERCLA decision document for which a RCRA permit modification is required per the IAG. For example, CDPHE has not issued a RCRA permit modification for the tanks located in Building 910 which were constructed pursuant to the OU 4 IM/IRA decision document and which are currently used for the management of hazardous waste. Similarly, CDPHE has failed to issue a RCRA permit modification for Building 891 (the OU1/OU2 wastewater treatment unit), which incidentally is used for the treatment of RCRA hazardous waste, such as RCRA regulated decontamination rinsate. As a member of the public, I am appalled that CDPHE requires a RCRA permit modification for CERCLA actions, such as this, and then fails to issue the RCRA permit modification. CDPHE is in violation of the IAG and apparently ignorant of there obligations to the public and DOE.

- Page 2, First Column, Third Paragraph. This paragraph states that DOE anticipates taking no further action relative to the remaining OU 1 IHSSs given that they are already in a protective state. What is DOE basing this determination upon? If this is a determination that

resulted from the baseline risk assessment, fine. In that case, the document should simply state that. What has been done to place the other IHSSs in a protective state? It is my understanding that only hot spot removal has been initiated. Please clarify these concerns.

- Page 3, Second Column, Third Paragraph. Again, the mysterious language of "past operational practices **may** have resulted in environmental contamination". Please determine whether the IHSSs have contributed to the contamination at OU 1 such that remedial action is necessary. Those IHSSs that did not contribute to the environmental contamination should be dismissed from further discussion.

- Page 3, IHSS 102. This discussion states that the disposal of oily sludge did not cause subsurface contamination and is not a source for groundwater contamination. I do not understand how intentional disposal of uncontained oily waste into an unlined trench cannot cause subsurface contamination. If you are trying to state that the disposal did not cause contamination in excess of levels that would trigger a response, then the document should be revised accordingly.

- Page 3, IHSS 103. Although there is no historical knowledge of the chemicals disposed in this IHSS, The RFI/RI should have determined whether chemical contamination was present and if so the extent and nature of the contamination. If this is not the case then the RFI/RI was inadequate. If the RFI/RI did reach conclusions on this matter, then this proposed plan should describe the results of that investigation. As written, the public is lead to believe that DOE still doesn't know what is buried at IHSS 103. Please clarify this matter.

- Page 3, IHSS 104. What is meant by "no documentation was found during the historical release investigation that verifies the existence of this site"? Is this supposed to mean that the Historical Release Report was the sole source of the RFI/RI? Is the public to assume that only a documentation review was conducted to conclude that there is no actual site? Why isn't it stated that the field investigation concluded that there is no IHSS 104? I am not convinced that DOE has adequately characterized this IHSS. Please clarify this matter.

- Page 4, IHSS 105. Again, you state that "suspected" tank leaks have occurred and yet IHSS 105 does not appear to be a source of contamination. Again, the purpose of the RFI/RI is to determine the nature and extent of releases. Therefore, if DOE cannot conclusively state whether releases occurred or whether an IHSS is or is not a source of contamination that requires remedial action then I suggest that the RFI/RI was inadequate. Please revise this

document to provide definitive information to the public regarding the extent and nature of contamination. If no remedial action is needed, fine, but please be definitive.

- Page 4, IHSS 106. Since sanitary waste would hardly be considered to be a hazardous substance, contaminant or pollutant, why is this IHSS even being discussed. Of course, DOE probably used this system for the disposal of other regulated hazardous substances. However, such information is not provided in this proposed plan so definition conclusions cannot be reached. Either clarify that this IHSS was only used for sanitary waste that is not a hazardous substance, pollutant or contaminant and thus not subject to CERCLA or RCRA hazardous waste regulations or specify the hazardous substances, pollutants, or contaminants that were managed at this IHSS that are subjecting it to cleanup.

- Page 4, IHSSs 119.1 and 119.2. This section states that these IHSSs contain unknown quantities and types of solvent. If the types and quantities of the chemicals are unknown, how is it that DOE can state that the chemicals were solvents. I believe DOE is trying to avoid the issue of whether spent solvents, that may meet a current RCRA listing description of 6 CCR 1007-3 §261, Subpart D, were disposed in this OU and in these IHSSs in particular. As you know, RCRA listed waste descriptions apply retroactively to wastes that were disposed of prior to the effective date of RCRA when those wastes are excavated and actively managed as part of a remedial action (see December 21, 1988, *Federal Register* at page 51444). If DOE knows that these chemicals are solvents then please identify the types of solvents and whether they will meet a current listed waste description at the time such solvents and/or contaminated soils are excavated for treatment and subsequently land disposed. Further, if treatment occurs, please specify whether treatment will be sufficient to meet land disposal restriction (LDR) treatment standards. Finally, address how minimum technology requirements will be met if listed waste contaminated soil is excavated, treated and redeposited (i.e., land disposed).

- Page 5, First Column, Second Paragraph. This section identifies a number of halogenated solvents. However, the description of the IHSSs indicates that there is no information related to the types or quantities of solvents disposed at these IHSSs. There appears to be an inconsistency here. Please clarify this inconsistency. Also, please state whether these solvents meet any of the current listed waste descriptions and whether the soil or other environmental media are expected to "contain" listed hazardous wastes. It is my understanding that the groundwater removed from the SID was being treated at the OU1 treatment system (Building 891) because it contains

listed hazardous waste. Therefore, one would suspect that the soils in this OU may also contain listed hazardous wastes. Please clarify these matters.

- Page 6, Alternative 5. This alternative states that excavated soils may be thermally treated and disposed on or off site. Alternatively, soils may be disposed of on site or off site with no treatment. Please explain how solvent contaminated soils can be excavated from an area of contamination and disposed elsewhere without reducing the risk from such contamination, assuming no treatment occurs. From a practical standpoint and as a tax payer I say there is little or no benefit from excavating contaminated soil only to bury it somewhere else. In fact this was EPA's greatest concern when they developed their off-site policy (see September 23, 1993, *Federal Register* at page 49200).

  Also, with this type of a broad remedial action, which really includes more than one remedial action, please explain how cost considerations can be considered during the detailed and comparative analysis. Clearly there will be different cost impacts, as well as impacts to the other nine evaluation criteria depending upon whether treatment occurs and whether the waste is disposed on site or off site. Please revise this remedial action alternative to specify more definitively how the remedial action will be conducted. Perhaps DOE needs to break this down into two separate remedial actions; one involving the disposal of treated soils on site and one that involves the off site disposal of treated or non-treated soils.

- Alternative 5, General Comment. Where will the soil be disposed if it is disposed on site? As you should be aware, placement of contaminated soil outside of the area of contamination (AOC) or inside the AOC, if it is excavated and then treated in a separated waste management unit, will trigger land disposal restriction (LDR) treatment standards and minimum technology requirements (MTRs) for land disposal units (see OSWER Directive 9234.2-04FS, dated October 1989). Of course, RCRA permits will also be necessary if disposal occurs outside of the AOC, given that CDPHE has chosen to enforce their RCRA authority and the on-site permitting exemption allowed by CERCLA has been eliminated by CDPHE's interference in the CERCLA process. Therefore, please revise Alternative 5 to clarify whether (1) treatment will occur, (2) whether CDPHE will require a RCRA permit for the thermal treatment unit, (3) whether the excavated soils will require management as a hazardous waste either because they contain listed hazardous wastes or because they exhibit one or more of the hazardous waste characteristics and (4) whether MTR and LDR will apply to the area where these treated or non-treated soils will be disposed.

- Page 7, First Column, Second Paragraph, Compliance with ARARs. Please specify the ARAR which dictates the levels of radioactivity that must be met before placement of soils contaminated with radionuclides is allowed.

- Page 7, First Column, Third Paragraph. This paragraph states that all alternatives evaluated in the detailed analysis **should meet** the other key **potential** ARARs identified above. First, a requirement is either an ARAR or it is not and the requirements noted in this section should be identified as an ARAR or deleted. Secondly, protection of human health and the environment and compliance with ARARs are threshold criteria that all remedial alternatives must meet (see 40 CFR 300.430(f)(1)(ii)(A) and (B)). Any alternative that does not meet ARARs cannot be selected for implementation and there is no reason to further evaluate them. Therefore, please definitively state that the alternatives meet ARARs or if one or more alternative does not meet ARARs, delete it from further consideration.

- General Comment. Cost. I cannot believe that the preferred remedial action is expected to cost 1.9 million dollars for the treatment of approximately 1,000 to 2,000 cubic yards of soil that is slightly outside of EPA's acceptable risk range. Please consider bringing an off-site firm to RFETS that is well versed in remedial activities, including thermal desorption of soils contaminated with organic constituents, to complete the job for significantly less money.